

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

MICHAEL G. WASHINGTON, #351532 §
VS. § CIVIL ACTION NO. 9:06cv67
BLAKE LAMB, ET AL. §

ORDER OF DISMISSAL

Plaintiff Michael G. Washington, an inmate confined at the Eastham Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the lawsuit should be dismissed pursuant to the “three strikes” provision of 28 U.S.C. § 1915(g) and with prejudice because the Plaintiff failed to exhaust his administrative remedies before he filed the lawsuit pursuant to *Underwood v. Wilson*, 151 F.3d 292 (5th Cir. 1998). The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of the Plaintiff are without merit. He complained in his objections about the recommendation to revoke his *in forma pauperis* status. However, the recommendation is in accordance with the Fifth Circuit’s decision in *Banos v. O’Guin*, 144 F.3d 883, 885 (5th Cir. 1998). In that case, the Fifth Circuit

dismissed the appeal pursuant to the “three strikes” provision of 28 U.S.C. § 1915(g) and revoked the appellant’s *in forma pauperis* status. *Id.* With respect to the objection about the order taking the full filing fee out of his trust fund account over time, the Plaintiff owed the full filing fee at the moment he submitted the lawsuit and the Court may continue to collect the fee until it is paid despite a dismissal pursuant to § 1915(g). *In re Alea*, 286 F.3d 378 (6th Cir. 2002). The objections lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the cause of action is **DISMISSED** with prejudice. The Plaintiff’s *in forma pauperis* status is revoked. It is finally

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this the 17 day of **May, 2006**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge